

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Juneau

LIVING THE DREAM ALASKA LLC,

Plaintiff(s),

vs.

MERCEDES-BENZ USA, LLC,

Defendant(s).

CASE NO. 1JU-18-00901 CI

**SUMMONS
AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: MERCEDES-BENZ USA, LLC

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at (address): P.O. Box 110400, Juneau, AK 99811-4100 within 20 days* after the day you receive this summons.

In addition, a copy of your answer must be sent to:

Plaintiff's attorney or plaintiff (if unrepresented): Goriune Dudukgian

Address: Northern Justice Project, LLC

310 K Street, Suite 200, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.state.ak.us/courts/forms.htm, to inform the court.

-OR-

If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

To: Plaintiff and Defendant

THIS MATTER IS FORMALLY
ASSIGNED TO
AMY G. MEAD
SUPERIOR COURT JUDGE

You are hereby given notice that this case has been assigned to Judge

CLERK OF COURT

By: Erik W. Swamy
Deputy Clerk

Date

8/28/18

The state or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 (2/06) ss 3)
SUMMONS

1 Goriune Dudukgian, AK Bar No. 0506051
2 James J. Davis, Jr., AK Bar No. 9412140
3 **NORTHERN JUSTICE PROJECT, LLC**
4 310 K Street, Suite 200
5 Anchorage, AK 99501
6 Tel: (907) 264-6634
7 Fax: (866) 813-8645
8 Email: gdudukgian@njp-law.com
9 Email: jdavis@njp-law.com
10 Attorneys for Plaintiff

11 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

12 **FIRST JUDICIAL DISTRICT AT JUNEAU**

13 **LIVING THE DREAM ALASKA LLC,**)

14 **Plaintiff,**)

15 **v.**)

16 **MERCEDES-BENZ USA, LLC,**)

17 **Defendant.**)

Case No. 1JU-18- 00901 CI

18 **COMPLAINT**

19 COMES NOW plaintiff Living the Dream Alaska LLC, by and through counsel,
20 the Northern Justice Project, LLC, and for its complaint against defendant Mercedes-Benz
21 USA, LLC, alleges and requests relief as follows:

22 **JURISDICTION AND VENUE**

23
24 1. This Court has jurisdiction over this case pursuant to AS 22.10.020 as
25 plaintiff is seeking damages in excess of \$100,000 and equitable relief which is beyond
26 the jurisdiction of the District Court.
27
28

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1 2. Venue is proper under AS 22.10.030 and Alaska Civil Rule 3(c) as
2 plaintiff's claims arose within the First Judicial District.

3
4 **PARTIES**

5 3. Plaintiff Living the Dream Alaska LLC is an Alaska limited liability
6 company with its principal place of business in Juneau, Alaska.

7
8 4. Defendant Mercedes-Benz USA, LLC is a Delaware limited liability
9 company authorized to transact business within the State of Alaska. Defendant is engaged
10 in the business of designing, manufacturing, and selling "motor vehicles," as that term is
11 defined under AS 45.45.360(6), including the vehicle that is the subject of this lawsuit.

12
13 **GENERAL ALLEGATIONS**

14 5. On or about October 30, 2016, plaintiff purchased and took delivery of a
15 new 2016 Mercedes-Benz Sprinter 2500 Crew Van, Vehicle Identification Number
16 WD4FE7CD2GP327283 (hereinafter "the Vehicle").
17

18 6. Defendant was the "manufacturer" of the Vehicle, as that term is defined
19 under AS 45.45.360(5).

20 7. The "full purchase price" for the Vehicle, as that term is defined under AS
21 45.45.360(4), was \$56,139.00.

22 8. Defendant expressly warranted in writing that "any authorized Van Dealer
23 will make any repairs or replacements necessary to correct defects in material or
24 workmanship arising" within 36 months or 36,000 miles, whichever occurred first, of
25 when plaintiff took delivery of the Vehicle.
26
27
28

1 9. Soon after purchasing the Vehicle, the plaintiff discovered a
2 "nonconformity," as that term is defined under AS 45.45.360(7). Specifically, there is a
3 clunking noise and vibration from the drive train when shifting into drive and reverse and
4 upon acceleration of the Vehicle. Moreover, the Vehicle does not reliably engage or
5 disengage from four-wheel drive and gets "stuck" in four-wheel drive for extended
6 periods of time. These nonconformities substantially impair the use and/or market value
7 of the Vehicle.
8

10 10. Defendant and/or its authorized Van Dealers have been unable to repair the
11 nonconformities despite more than three attempts to do so.
12

13 11. Plaintiff has substantially complied with the notice requirements under
14 Alaska's lemon law statute to claim a refund or replacement vehicle.
15

16 12. Defendant, to date, has refused to provide plaintiff with a refund of the full
17 purchase price of the Vehicle or a new, comparable vehicle. Defendant stated in a letter

18 dated August 31, 2017 from Tauren Grant, Aftersales Operations Manager, Western
19 Region, that "MBUSA must . . . respectfully decline your request to repurchase" the
20 Vehicle.
21

22 13. The Vehicle continues to have the nonconformities with the drive train.
23

24 **CLAIMS FOR RELIEF**

25 **COUNT I – VIOLATION OF THE ALASKA LEMON LAW STATUTE**

26 14. Plaintiff repeats and incorporates by reference the allegations in each of the
27 preceding paragraphs.
28

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1 15. Defendant violated AS 45.45.305 by refusing to provide the plaintiff with
2 a refund or replacement vehicle despite the fact that the defendant was unable to conform
3 the Vehicle to an applicable express warranty after a reasonable number of attempts.
4

5 **COUNT II – VIOLATION OF ALASKA’S UNFAIR TRADE PRACTICES**
6 **AND CONSUMER PROTECTION ACT**

7 16. Plaintiff repeats and incorporates by reference the allegations in each of the
8 preceding paragraphs.
9

10 17. Defendant is engaged in “trade or commerce” within the meaning of AS
11 45.50.471(a).

12 18. Defendant committed an unfair trade practice under AS 45.50.471(b) by
13 refusing to provide the plaintiff with a refund or replacement vehicle despite the fact that
14 the defendant was unable to conform the Vehicle to an applicable express warranty after
15 a reasonable number of attempts.
16

17 ~~19. Plaintiff has suffered an ascertainable loss of money or property as a direct~~
18 ~~and proximate result of the defendant’s failure to provide the plaintiff with a refund or~~
19 ~~replacement vehicle.~~
20

21 **COUNT III – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**
22

23 20. Plaintiff repeats and incorporates by reference the allegations in each of the
24 preceding paragraphs.

25 21. The Vehicle is a “consumer product” as defined under the Magnuson-Moss
26 Warranty Act, 15 U.S.C. § 2301(1), because it is normally used for personal, family, or
27 household purposes.
28

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1 22. Plaintiff is the original buyer of the Vehicle and is therefore a "consumer"
2 as that term is defined under 15 U.S.C. § 2301(3).
3

4 23. Defendant is a "warrantor" and "supplier" as defined under 15 U.S.C. §§
5 2301(4) and (5).
6

7 24. Defendant provided the plaintiff with a "written warranty" as defined under
8 15 U.S.C. § 2301(6).
9

10 25. Defendant has failed to conform the Vehicle to applicable written and
11 implied warranties within a reasonable period of time and without charge to the plaintiff
12 in violation of the Magnusson-Moss Warranty Act.

13 26. Plaintiff has been damaged as a result of defendant's breaches of its written
14 and implied warranties as set forth in this Complaint. Plaintiff is therefore entitled to
15 damages and equitable relief, including revocation of acceptance of the Vehicle, under 15
16 U.S.C. § 2310(d).
17

18 **COUNT IV – BREACH OF EXPRESS WARRANTY**

19 27. Plaintiff repeats and incorporates by reference the allegations in each of the
20 preceding paragraphs.
21

22 28. Defendant's "Service and Warranty Information 2016" booklet expressly
23 warrants "to the original and each subsequent owner of a new Sprinter vehicle that any
24 authorized Van Dealer will make any repairs or replacements necessary to correct defects
25 in material or workmanship arising during the warranty period." The warranty period is
26 generally for 36 months or 36,000 miles, whichever occurs first, from when a buyer takes
27
28

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1 delivery of the vehicle.

2 29. Plaintiff relied upon defendant's written warranty in purchasing the
3 Vehicle. The warranty formed part of the basis of the plaintiff's bargain.
4

5 30. Defendant breached its express warranty because its authorized Van
6 Dealers have failed to make the necessary repairs to correct the defects in the Vehicle's
7 drive train and because the defendant has refused to provide plaintiff with a replacement
8 vehicle.
9

10 31. Plaintiff notified defendant of the breach of express warranty within a
11 reasonable time after discovering the breach.
12

13 32. Plaintiff has suffered and shall continue to suffer damages as a direct and
14 proximate result of defendant's failure to repair or replace the Vehicle or refund its full
15 purchase price within a reasonable period of time.
16

17 **COUNT V – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

18 33. Plaintiff repeats and incorporates by reference the allegations in each of the
19 preceding paragraphs.
20

21 34. During all relevant times, defendant has been a "merchant" of motor
22 vehicles, as that term is defined under AS 45.02.104(a).
23

24 35. The Vehicle purchased by the plaintiff was subject to an implied warranty
25 of merchantability under AS 45.02.314.
26

27 36. The defects in the Vehicle's drive train rendered the Vehicle unfit for the
28 ordinary purposes for which a crew van is used and thus unmerchantable.

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1 37. Plaintiff notified defendant of the breach of the implied warranty of
2 merchantability within a reasonable time after discovering the breach.

3
4 38. Plaintiff has suffered and shall continue to suffer damages as a direct and
5 proximate result of the defendant's breach of the implied warranty of merchantability
6 with regard to the Vehicle.

7
8 **COUNT VI – REVOCATION OF ACCEPTANCE**

9 39. Plaintiff repeats and incorporates by reference the allegations in each of the
10 preceding paragraphs.

11 40. The defects in the Vehicle's drive train constitute a nonconformity which
12 substantially impair the value of the Vehicle to the plaintiff.

13
14 41. Plaintiff reasonably believed that said nonconformity would be cured by
15 the defendant within a reasonable period of time pursuant to the terms of the defendant's
16 "Service and Warranty Information 2016" booklet for the Vehicle.
17

18 42. After multiple attempts by the defendant and/or its authorized Van Dealers
19 to cure, it has become apparent that said nonconformity cannot be seasonably cured.

20 43. In a series of letters, emails and telephone calls beginning on or about
21 August 24, 2017, plaintiff notified defendant of its revocation of acceptance of the
22 Vehicle.
23

24 44. Defendant has refused to honor plaintiff's revocation of acceptance of the
25 Vehicle and has not refunded the Vehicle's purchase price to the plaintiff. Rather, on
26 August 31, 2017, defendant notified plaintiff that that "MBUSA must . . . respectfully
27
28

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1 decline your request to repurchase" the Vehicle.

2 **WHEREFORE**, plaintiff prays for the following relief:

- 3
- 4 (1) A refund of the \$56,139.00 purchase price paid by the plaintiff for the
- 5 Vehicle;
- 6 (2) An award of actual, consequential, and incidental damages;
- 7 (3) An award of treble damages under AS 45.50.531(a);
- 8 (4) Prejudgment interest;
- 9 (5) An award of the costs and expenses of litigation and full reasonable
- 10 attorney's fees;
- 11
- 12 (6) All other proper relief.
- 13

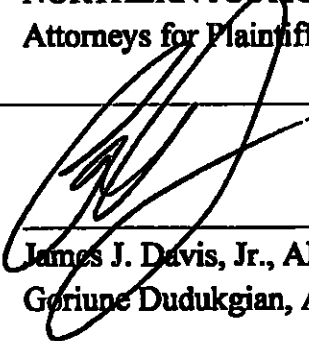
14 DATED this 21st day of August, 2018 at Anchorage, Alaska.

15 **NORTHERN JUSTICE PROJECT, LLC**
16 **Attorneys for Plaintiff**

17

18

19

20 
James J. Davis, Jr., AK Bar No. 9412140
Goriune Dudukgian, AK Bar No. 0506051

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